

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

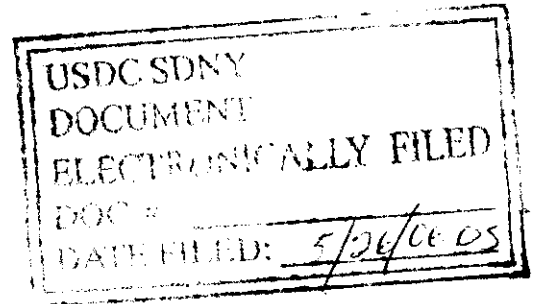
JOHN L. LEWIS, et al.,

Plaintiffs,

- against -

RAYMOND CUNNINGHAM, et al.,

Defendants.



MEMORANDUM
OPINION & ORDER

05 Civ. 9243 (GBD) (RLE)

RONALD L. ELLIS, United States Magistrate Judge:

Pro se plaintiffs, John L. Lewis ("Lewis") and Jimmy D. Smith, filed this lawsuit against Raymond Cunningham, the Superintendent of Woodbourne Correctional Facility, and other employees of that facility ("defendants") raising civil rights claims. In discovery, defendants requested that Lewis and Smith execute authorization forms permitting access to their mental health records. Lewis refused to sign the form, stating his position that the records were unnecessary for this litigation. Defendants requested that the Court grant defendants' request for Lewis's mental health records, pointing out that the plaintiffs had put their mental health at issue by claiming damages for "mental anguish" caused by defendants' actions. *See* Second Amended Complaint ¶¶ 91-93. In response, Lewis requested that the Court hold defendants' request for the mental health records in abeyance until the damages phase of this litigation.

Lewis's request is denied, and defendants request is granted. First, the mental health records are clearly relevant to the plaintiffs' claim for damages based on mental anguish. Second, without an order pursuant to Federal Rule of Civil Procedure 42(b) separating the liability and damages phases of this action into two proceedings, discovery on issues relevant to plaintiffs' damages claim is proper at this time. *See, e.g., Simon v. Philip Morris Inc.*, 200

F.R.D. 21, 27 (E.D.N.Y. 2001) (“Rule 42(b) provides that a judge may separate any issue of a cause of action, thus creating a series of component stages. Each issue is tried successively, with plaintiffs having to survive each step in order to progress to the next, and ultimately to be awarded any remedy . . .”).

IT IS HEREBY ORDERED THAT defendants’ request for access to Lewis’s mental health records is **GRANTED**.

SO ORDERED this 26th day of May 2006
New York, New York

A handwritten signature in black ink, appearing to read "Ronald L. Ellis", written in a cursive style.

The Honorable Ronald L. Ellis
United States Magistrate Judge